

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

VIRGIL SMITH, Individually,)	
and ADAM SMITH, through his)	
legal guardian, VIRGIL SMITH,)	
)	
Plaintiffs,)	
)	
v.)	No. 13-cv-1323-JPG-DGW
)	
PHOENIX SEATING SYSTEMS, LLC)	
d/b/a FALCON/LEBAC SYSTEMS,)	
a limited liability)	
corporation,)	
)	
Defendant.)	

INTRODUCTION

Jurisdiction lies pursuant to 28 U.S.C. § 1332, diversity of citizenship, in that no plaintiff is from the same state as any defendant, and the amount in controversy exceeds SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), exclusive of costs and interest.

COMPLAINT

COUNT I

(Virgil Smith v. Phoenix Seating Systems, LLC - Strict Liability)

Comes now the plaintiffs, by and through their attorneys, **KEEFE & KEEFE, P.C.**, and for Count I of their Complaint against the Defendant, Phoenix Seating Systems, LLC, state:

1. That this case was voluntarily dismissed with consent of all parties on December 28, 2012, and is being refiled with the understanding that all discovery remains in effect.

2. That at all times herein mentioned the plaintiff, Virgil Smith, was a citizen and resident of the state of Illinois and both father and legal guardian of co-plaintiff Adam Smith,

himself - at all times herein mentioned - a citizen and resident of the state of Illinois.

3. That at all times herein mentioned, the defendant, Phoenix Seating Systems, LLC, d/b/a Falcon/LeBac Systems, was a Florida corporation, the designer and manufacturer of rehabilitative and wheelchair components, with its principal place of business in Florida, and the manufacturer of a certain wheelchair armrest which it sold to Apria Healthcare Group, Inc., who in turn sold it to the plaintiffs in June 2007.

4. That specifically, Defendant Phoenix is an LLC with the following five members and corresponding states of citizenship: David Winer of Virginia, Joshua Barnum of Colorado, Christopher Barnum of Delaware, Michael Borchbeck of Florida, and Barbara Barnum of Missouri.

5. That on August 7, 2007 Adam Smith's left arm became severely reddened and had several fluid-filled blisters on it, at which point he was taken to the ER.

6. That at said time and place, and at the time it left the possession and control of defendant Phoenix Seating Systems, the armrest was in a defective and unreasonably dangerous condition and that:

- a) It contained polyurethanes which, when originally manufactured, sustained only partial polymerization of amines and isocyanates, and an excess of the catalyst mercury;
- b) The armrest was completely devoid of labeling;

- c) The armrest contained no warnings of any kind, including a warning of the potential health risks posed by the materials used to manufacture the armrest.

7. That as a direct and proximate result of the defective and unreasonably dangerous condition of the product as aforesaid, plaintiff sustained prolonged exposure to a toxic chemical combination, suffering dermal lesions externally, as well as severe kidney, liver, and pulmonary damage. Plaintiff has suffered permanent pain, mental anguish, disability and disfigurement. Plaintiff has incurred and become liable for large sums of money in hospital, medical and related expenses and will become liable for additional sums in the future. Plaintiff has been permanently prevented from attending to his usual affairs and duties and lost wages and income, and will lose additional wages and income in the future all to his damage in a substantial amount.

WHEREFORE, plaintiff Virgil Smith demands judgment against the defendant, Phoenix Seating Systems, LLC, in an amount greater than SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), plus costs and exclusive of interest.

COUNT II

(Adam Smith v. Phoenix Seating Systems, LLC - Strict Liability)

Comes now the plaintiffs, by and through their attorneys, **KEEFE & KEEFE, P.C.**, and for Count II of their Complaint against the Defendant, Phoenix Seating Systems, LLC, state:

1.-7. Plaintiff hereby adopts and incorporates the allegations of paragraphs 1 through and including 7 of Count I of their Complaint as and for paragraphs 1 through and including 7 of Count II of their Complaint.

WHEREFORE, plaintiff Adam Smith demands judgment against the defendant, Phoenix Seating Systems, LLC, in an amount greater than SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), plus costs and exclusive of interest.

/s/Thomas Q. Keefe, III
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